



March 7, 2005

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 97-80

Dear Ms. Dortch:

On Friday, March 4, 2005, William Check, NCTA Senior Vice President for Science & Technology, and I had separate meetings with Jordan Goldstein, Legal Advisor to Commissioner Michael J. Copps and Eric Bash, Interim Legal Advisor to Commissioner Jonathan S. Adelstein. On Monday, March 7, 2005, I had a similar meeting with John Branscome, Acting Legal Advisor to Commissioner Kathleen Q. Abernathy. During these meetings, we discussed why the July, 2006 ban on cable operator deployment of integrated set-top boxes should be eliminated, or at a minimum, deferred.

The discussion reflected the arguments previously made by NCTA and others in written submissions in the above-referenced docket. In particular, with Mr. Bash and Mr. Branscome, we explained that the FCC's adoption of rules requiring support for CableCARD-enabled devices and the cable industry's implementation of the 2002 MSO-CE manufacturer agreement on "Plug and Play" DTV products have fundamentally changed the basis for the ban on integrated set-top boxes. The ban would limit consumer choice and impose a tax on cable customers, who will have to pay more for equipment that will provide them with no additional benefits. Specifically we made the following points:

- The cable industry has made a firm commitment to facilitate new retail distribution channels and to support CableCARD-enabled devices, as exemplified by its implementation of the 2002 MSO-CE Manufacturer Agreement on "Plug and Play" DTV Products. *There*



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are now over 27,000 CableCARDS deployed for use in Plug & Play devices.

- As evidence of its commitment to retail availability, the cable industry has invested extraordinary energy, time, and money in the success of CableCARD-supported digital television sets.
- The FCC Rules implementing the MSO-CE Agreement require digital cable systems to support CableCARD-enabled devices, obviating the need for the costly integration ban which arguably served that purpose.
- A ban on integrated set-top boxes would substantially increase equipment costs (and monthly lease prices) and reduce equipment options for consumers.
- There would be no benefit to consumers from having CableCARD-enabled leased set-top boxes because leased boxes remain with the operator when a customer moves and they do not need the portability that CableCARDs enable.
- The two-way MSO-CE negotiations are proceeding at a timely pace given the number of parties and issues involved.
- The Integration Ban may stymie the development of a low-cost digital set-top box and a prompt digital transition as well as the development of a downloadable software security solution.

In our meetings with Mr. Goldstein and Mr. Branscome, we made the additional point that it was fundamentally unfair that cable operators were saddled with the costly and unnecessary Integration Ban while their primary video competitors – DBS providers – were not. In response to a question from Mr. Goldstein, we explained that the “exemption” given to DBS when the FCC adopted the Integration Ban in 1998 was an exercise of Commission discretion; it was not mandated by statute.

And, as NCTA has pointed out in previous filings,¹ whether or not that decision made any sense when the DBS exemption was adopted in 1998, it makes no sense in today’s environment where (1) DirecTV and EchoStar have become formidable competitors to cable, each having more subscribers than virtually all cable operators who are nonetheless subject to the rule; (2) DBS providers themselves use proprietary, *integrated* set-top boxes; (3) DBS providers do not (and need not) support a separate security (“common interface”) requirement even though their equipment is not portable across different providers’ systems; *i.e.*, a

¹ See *e.g.*, NCTA Comments in CS Docket No. 97-80, February 19, 2004, at 17-20; NCTA Reply Comments, March 10, 2004, at 12, and n.29; NCTA *ex parte* Dec. 20, 2004, at 3, n. 3; NCTA *ex parte*, January 4, 2005, at 7; NCTA *ex parte*, January 11, 2005, at 8. See also Comcast Corporation *ex parte*, January 19, 2005 at 2.

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consumer cannot buy an EchoStar set-top box and use it with a DirecTV system and vice versa; (4) DBS providers (particularly DirecTV) appear to have abandoned using multiple equipment suppliers – the exact opposite result the “commercial availability” statutes and rules were intended to achieve; and (5) DBS providers are supplied by some of the very consumer electronics manufacturers who urge that cable operators be hobbled by the Integration Ban.

Moreover, as telephone companies and Information Technology (“IT”) companies move into video programming distribution, they may well consider themselves exempt from the Ban (as SBS apparently does with respect to Title VI regulation when it uses IP video). While we did not urge imposition of the Integration Ban on DBS providers or others, we did explain that there is no longer any economic or legal basis for singling out cable operators as the only video provider subject to the Integration Ban. We argued that to continue to do so in light of all of the changed circumstances since 1998 would be arbitrary and capricious and an abuse of the Commission’s discretion.

If you have any questions, please contact the undersigned.

Sincerely,

/s/ Neal M. Goldberg

Neal M. Goldberg

cc: Jordan Goldstein
Eric Bash
John Branscome